THE
MADRAS LAW JOURNAL.

II] AUGUST [1945

RECENT RETIREMENTS FROM THE BENCH.

Within a few days of each other, Mr. Justice King and Mr. Justice Mockett have retired from the High Court Bench. Both had a fairly long tenure of office having served as Judges for more than a decade. As Judges they typified two different types of training with corresponding differences in outlook and approach. The former, as a member of the Indian Civil Service, came to the Bench with an intimate knowledge of the conditions of life of the people of this Presidency, their customs and usages, and the revenue and land laws applicable to them. His approach to the questions coming up for adjudication before him was to some extent influenced by this factor. He would like to have the broad facts of a case always; the details were not to be overstressed. Nor was he for indulging in excursus into the history of the law or its evolution where he felt the facts to be clear or as not affording scope for elaborate legal arguments or citation of authorities. There was something wistful in the learned Judge's remark, in the course of his reply to the reference made by the Advocate-General, that not having practised at the Bar he had not the advantages resulting from such training. During the earlier years, Mr. Justice King was always suave, patient and courteous even where he might feel an argument to be prolix. In later days, probably due to poor health, there was noticeable occasionally a touch of impatience. But justice never suffered. Quick to grasp the facts of a case however heavy the case might be, the learned Judge had the gift of marshalling the facts and delivering even long judgments altogether *ex tempore* without a pause and scarcely with any reference to his notes.

Mr. Justice Mockett went to the Bench directly from the Bar. He had first-hand knowledge of the conditions of the Bar and of the hard work which its members had to put in often with inadequate remuneration. He was therefore genuinely sympathetic towards them. He was a very conscientious Judge and conscious of his limitations. He was patient and thorough and anxious to make sure of every step before he proceeded to the next and wanted to have all the facts of a case before arriving at conclusions. He was comparatively slow but was steady. As was aptly remarked: "He realised the great truth that each case was important to the parties in the case." Both Mr. Justice King and Mr. Justice Mockett were associated with humanitarian activities in the city prominently, the former with the Y. M. C. A. and the latter with the S. P. C. A. in particular. The public of Madras will miss these figures for a long time.

MADRAS BILL FOR SURCHARGE ON STAMP DUTY.

A taxing statute is always obnoxious to the tax-payer, but looked at from any point of view the proposal of the Madras Government to levy a surcharge on stamp duty is not justified. The object of the bill is stated as follows: "The cost of the administration of municipalities and local bodies has of late increased considerably and their present resources are found totally inadequate. Local bodies also require considerable additional funds for schemes for post-war development." The proposed levy is confined to instruments of sale, gift and mortgage with possession of immoveable properties and the rate of surcharge is sought to be fixed in the first instance at Rupees Two per cent. on the amount of the consideration, the value of the property or the amount secured by the mortgage as the case may be. The maximum rate provided in the bill is Rupees Five per cent. on such value.

The propriety of the proposed levy may be examined from two ends, that of the tax-payer and that of the Government. It is well known that properties consisting of lands are largely owned in this Province by way of small holdings, and the peasant-

proprietor or petty landlord is frequently put to the necessity of effecting mortgages with possession thereof, and oftentimes the period fixed for redemption is confined to a few years. Voluntary transfers again are on the increase by reason of fragmentation of holdings which is largely due to the rules of partition. In those cases the increase in stamp duty will undoubtedly work a great hardship. It is no consolation to the tax-payer to be told that he will get in return certain advantages in the schemes of post-war reconstruction, as such advantages from his view point are uncertain, and he will be justified in asking the Government if there are not other sources of revenue, or at any rate why persons who directly benefit by such schemes when taken on hand should not be made to pay therefor.

One of the several defects in the Devolution Act has proved to be the transfer of subjects such as court-fees and stamp duty to the Provincial Governments. Not only have the scales of duty in the several Provinces become widely different, but most of the Provincial Governments have taken to those sources of revenue with something like the proverbial greed of the money-lender. It is well known that the scale of court-fees and stamp duty prevailing in Madras is the highest prevailing in India today, and it is needless to say that the scales of duty prevailing in this country is far higher than those prevalent in England or America. At least the increased levy of court-fees might professedly be justified on the ground that it is intended as a check on the growth of vexatious litigation. But the policy of the State regarding transfers of immoveable properties is that they should move about freely. It may be remembered that by the recent Act XVI of 1943, the Madras Government has made the stamp duty twice in some cases and one and a half times in other cases of what it was previously, and with the proposed levy the executant of a sale deed will be paying Rupees Five where before 1943 he was paying Rupees one and annas eight. It may well be asked why he should be surcharged like this when in an enlightened and at the same time a deficit Province such as Bengal, the Government has been carrying on with the old scale of stamp duty, namely, Rupee one and annas eight only per cent.

Is there anything to justify the measure on grounds of state policy? In this connection certain matters are worth considering. In the first place, the measure is brought in by an interim Government at a time when the popular Government is not functioning, and it therefore violates the rule "No representation, no taxation." Secondly, no attempt is made to show that the Government is unable to place a small portion of its existing resources at the disposal of the local bodies. The levy of the sales tax and the proposed levy of agricultural income-tax, not to speak of the healthy financial position of the Provincial Government, should be enough to place the local bodies in funds for any scheme of reconstruction they may have on hand. The taking over of public utility and transport concerns by those bodies should be considered a better mode of improving their finance than the proposed levy. And in respect of big capital schemes the proper course is to encourage a scheme of limited borrowing by local bodies and not to increase taxation all round. Nor can the proposed levy be justified as an anti-inflationary measure. If the prices of immoveable properties have recently gone up the stamp duty payable in respect of them is also proportionately larger.

In the statement of objects the measure is sought to be justified by reference to the fact that the Corporation of Madras is now levying a surcharge on such transfers. But one important distinction between conditions in the City and in the mofussil is that in the City equitable mortgages by deposit of title deeds form a common feature, and in those cases no stamp duty is payable. It is not necessary to discuss here why such transactions should not be recognised also in the mofussil by having the law suitably amended, and why landholders should not have the benefit thereof after rationalising the mode of issuing title deeds to immoveable properties. It is sufficient to say that conditions in the mofussil being different it is unsafe to draw on the city analogy. In fact the recent enhancement of the general stamp duty in the Province may be a good ground for taking away the surcharge levy in the City. It is submitted that the proposed bill is not called for in the present circumstances. At any rate, it is hoped that the bill will not become law till the popular legislature has had an opportunity to pronounce its opinion about the proposed measure.

B. V. V.